REMARKS

Claims 1-54 are pending in the application. In the final Office Action of March 7, 2005, all claims were rejected. Applicants hereby amend claims 1, 10, 14, 19, 29, 38, 44 and 54 and traverse the rejections as follows.

Rejection under 35 U.S.C. § 102(b)

Claims 1-54 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Oklahoma County Assessor's website http://www.oklahomacounty.org/assessor/TaxCalculator.htm. In rejecting claims 1-54, the Examiner reads the term "jurisdiction" as used in the claims to include school districts. The Examiner acknowledges the Applicants' position that there is a distinction, according to common property tax terminology, between a property tax jurisdiction and a property tax district such as a school district. The Examiner asserts, however, that Applicants should support this position by documentation outside of Applicants' own specification.

With this Response, Applicants submit evidence outside of the specification showing that it is well understood by those of ordinary skill in the art that there is a distinction between a tax jurisdiction and a tax district. This evidence includes the Declaration of Cecilia Benites Under Rule 132 (the "Benites Declaration") and attached excerpts from <u>Property Taxation</u>, <u>Third Edition</u>, Institute for Professionals in Taxation, Atlanta, Georgia (Copyright 2004) [hereinafter "<u>Property Taxation</u>"].

As set forth in the Benites Declaration, the Institute for Professionals in Taxation is the leading professional organization for the advancement of property tax practitioners. The Institute publishes Property Taxation, which is the only complete treatise on property taxation in the United States. Attached to the Benites Declaration as Exhibit A are relevant pages from Property Taxation, which provide a description of and distinguish the following three separate governmental authorities that are "key players of local government administration": (i) the "Assessor;" (ii) the "Tax Collector and Treasurer;" and (iii) the "Appropriating Body." Property Taxation, at pp. 32-33. As explained below, the first two of these (i.e., the Assessor and Tax Collector/Treasurer) are known as and referred to as property tax jurisdictions, whereas the third (i.e. the Appropriating Body) is known as and referred to as a property tax district such as a school district.

The Functions of the Assessor, the Treasurer and the Appropriating Body Are Distinct

As discussed in <u>Property Taxation</u>, the functions of the Assessor and Treasurer are separated by necessity. In regard to the function of the Assessor, <u>Property Taxation</u> states: "The responsibility of the assessor is the assignment of a fair and equitable assessment to each tax parcel. It is also the obligation of the assessor to ensure exemptions are properly administered and to hear appeals of assessments." <u>Property Taxation</u>, at p. 32. In regard to the function of the Treasurer, Property Taxation says:

Once the tax rate is set, the tax collector is charged with issuance of the tax bills and the collection of the taxes. This position can be elected, but it is more often appointed. The position is often combined with the treasurer function.

It is important to note that the task of tax collection is separate and distinct from the assessor. The separation of responsibility is often a source of annoyance to the public as they can bounce between offices while researching a tax issue. The separation of functions is critical to avoid any collusion of assessment and collection. Further, this separation of function is one of the hallmarks of our system of government.

<u>Property Taxation</u>, at p. 33. Thus, <u>Property Taxation</u> clearly describes the concept that the Assessor and the Treasurer are separate governmental entities with separate functions.

Property Taxation also clearly identifies the Appropriating Body as a third governmental entity that is separate from and has a different function than the Assessor and the Treasurer. The Appropriating Body is typically a city or town counsel, and creates the appropriation, sets the budget, and establishes the tax rate. In regard to the job of the Appropriating Body, Property Taxation states: "It is in this legislative forum that the appropriation of funds takes place. Once the appropriation is voted, the budget is set and the tax rate is established to be applied to the assessor's tax levy and the tax bills are issued by the tax collector. The city or town council may serve this function." Property Taxation, at p. 33. Property tax districts generally serve the purpose of appropriating funds for local governmental services such as school districts, fire districts, police districts and street improvement districts. Property tax districts are well-known for their appropriating function and their "district" boundaries by property taxpayers and families with children in public schools throughout the United States. The reason appropriating bodies are referred to as "districts" is certainly to proclaim the existence of boundaries to the geographic coverage of their appropriating function.

The Assessor and the Treasurer Are "Jurisdictions" Whereas the Appropriating Body Is a "District"

Of these three separate governmental authorities involved in local government administration (i.e., the "Assessor;" the "Tax Collector and Treasurer" and the "Appropriating Body"), only the Assessor and the Treasurer are recognized as having "jurisdictional" authority. Benites Declaration ¶ 8. For example, <u>Property Taxation</u> discusses the authority of the Assessor and the Treasurer using common property tax terminology as follows.

Jurisdictional Property Tax Sites

Perhaps the most helpful and most frequently used internet sites for property tax compliance are the official websites of <u>jurisdictional</u> assessors and property tax collectors. These sites usually contain important <u>jurisdictional</u> information such as phone numbers, addresses, due dates, deadlines, policies, procedures and more. But many websites go far beyond this general information, and provide parcel specific information. Some <u>jurisdictions</u> offer assessment and property tax data, while others have much more detail. Parcel maps, property tax distribution, payment history and assessment cards are just part of the wealth of information provided online by <u>local jurisdictions</u>. Some <u>jurisdictions</u> have taken their sites one step further and added business services like online property tax bill payment. (Emphasis added).

<u>Property Taxation</u>, at p. 50. The reason Assessors and Collectors and Treasurers are referred to as governing jurisdictions is to proclaim the boundaries of their governmental powers and authority. Cecilia Benites, CMI, is the author of this quoted text. As Ms. Benites confirms in her Declaration, in common property tax terminology the governmental authority of Assessors and Collectors and Treasurers is referred to as "jurisdictions," while the territorial boundaries of tax appropriating bodies are referred to as "districts." Benites Declaration ¶ 8.

The foregoing evidence is consistent with Applicants' specification, which also draws the distinction between tax assessing and billing jurisdictions that have rule making authority and tax districts that have no rule making authority (but may issue tax rates that are plugged into the formula for calculating property taxes). Rule making authority is described as the power to legally prescribe to taxpayers: a tax year; the formula for computing taxes; the period of time in between property revaluations; installment payment terms; valuation appeal procedures; and, create terminology used to describe property tax assessments. See Specification at pp. 28-35, FIG. 24.

The Oklahoma County Assessor's Website

In the Office Action, dated March 3, 2005, the Examiner asserts that the Oklahoma County Assessor's web site shows that "rates vary across the county depending on which school district the property is located (different tax rules/templates)." Office Action at p. 2. Applicants agree that the particular school district in which a property is located predicates the overall property tax rate applied to a property. Indeed, as reflected by the Oklahoma County web site (and numerous other Assessor web sites, as indicated in the Benites Declaration at ¶ 10), the word "district" is consistently used to describe the local tax rate district (i.e., territory) in which a property is located. For example, the following is an excerpt from the school district rate table on the Oklahoma County Assessor web site.

School Districts	General Fund	Building Fund	Sinking Fund	Total
Oklahoma City #89	35.96	5.14	16.74	57.84
Putnam City #1	36.46	5.21	14.04	55.71
Luther #3	36.54	5.22	4.94	46.70
Choctaw #4	36.91	5.27	19.15	61.33

These school districts, however, do not have different tax rules and do not reflect different tax assessing or billing jurisdictions. As the Office Action points out, the Oklahoma County Assessor web site "shows a tax bill calculator," and …"receives input and generates reports." Office Action at p. 2. The "Estimated Tax Calculator" from the Oklahoma County Assessor web site is shown below. This Estimated Tax Calculator is a very simple calculator

Description	Data Entry	
Taxable Market Value	100000	
Homestead Exemption	0	
Tax Rate	10	
Approximate Tax Bill	3 110	
	Reseil	

that repeats the same formula over and over again to "estimate" taxes for taxpayers. The user manually inputs two data fields, "Taxable Market Value" (of their home) and "Tax Rate." If the user does not know their Tax Rate, they can look up the amount of their Tax Rate in the Oklahoma County tax district rate table (shown in part above). After inputting the taxable market value of their home, and the applicable tax rate, the user presses the calculate button, and an estimate of the user's property tax liability is displayed.

The Estimated Tax Calculator follows only one tax calculation formula to provide this estimate for all of the property under the jurisdiction of the Oklahoma County Assessor because the Oklahoma County Assessor follows only one tax calculation formula. Thus, tax district rates vary across the tax districts in Oklahoma County, but the Oklahoma County Assessor has only one tax calculation formula that he follows for computing property taxes. (The single mathematical formula that the Estimated Tax Calculator follows to estimate the amount of tax is very simple: Market Value x County Equalization Ratio x Tax Rate. The County equalization ratio used by the Estimated Tax Calculator is always 11%, and the rate is divided by 1,000 (tax rates are typically expressed per \$100 or per \$1,000)).

In contrast to the Oklahoma County Estimated Tax Calculator, the system and method of Applicants' invention can use the property state and jurisdiction identifier to provide the correct tax calculation formula in a sophisticated template system and can calculate the amount of taxes payable on a parcel of property located within any Assessor's jurisdiction, anywhere in the United States. The Oklahoma County Assessor's website does not teach or suggest a system that is capable of processing property tax information accurately for many taxing jurisdictions each of which may have a different set of tax rules, as can Applicants' invention. Rather, the Oklahoma County Assessor's website reflects a system that can be used to make an approximate property tax calculation for only a single taxing jurisdiction (i.e., Oklahoma County) according to one rule (i.e., the property tax formula for Oklahoma County).

Applicants have amended claims 1, 10, 19, 29 and 44 to emphasize the commonly known distinction between a "jurisdiction" and a "district" explained above. Specifically, Applicants have amended claims 1 and 10 to recite that "the jurisdiction identifier is associated with a local property tax assessor, treasurer or collector that is not a local property tax appropriating district"; Applicants have amended claim 19 to recite that "the jurisdiction comprises a local property tax assessor, treasurer or collector that is not a local property tax appropriating district"; and

Applicants have amended claims 29 and 44 to recite that "each of the plurality of jurisdictions is a property tax assessor, treasurer or collector that is not a local property tax appropriating district." Applicants also have amended claims 10, 14, 19, 29, 38 and 54 to correct typographical errors and/or to make the claims more readable. Applicants respectfully submit that none of the amendments is intended to narrow or does narrow the scope of the amended claims and none of the amendments is necessary to patentability of the claims.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Dated: July 5, 2005.

Respectfully submitted,

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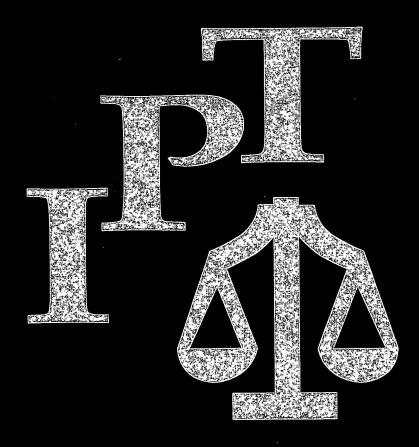
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Louis A. Lorredo, Paralegal

7-5-05
Date of Signature

PROPERTY TAXATION 3RD EDITION



Institute for Professionals in Taxation



Institute for Professionals in Taxation

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Again, thank you for purchasing the third edition of *PROPERTY TAXATION*.

Best regards,

Jerry Janata

Editor

FOREWORD

Property Taxation is designed to provide the beginner business property tax practitioner with a thorough introduction to the profession. It is also a reference work that students use when enrolled in the IPT Property Tax School, the Advanced Real Property Tax School, and the Personal Property Tax School.

The textbook also serves as a manual or desk reference book for the experienced property tax practitioner. It provides comprehensive coverage of all key issues and references local practice, assessors' manuals, statutes and case law. The issues are presented and explained, and leading cases from several jurisdictions are set forth to give vivid and practical interpretations of the issues in the various states.

There is an extensive index and a table of cases with helpful cross-reference keys to simplify research.

The textbook was written and edited for the Institute by Jerrold F. Janata, a lawyer and an appraiser specializing in property tax work for the past 40 years. He wrote and edited the first and second editions of this textbook and is the author of an earlier book on property taxes. An IPT committee composed of experienced practitioners has reviewed the text and, along with other members, has provided much input.

The Institute wishes to acknowledge the members of the Property Tax Book Committee who not only contributed their time, but authored and updated many parts of this book. The committee members are: Sam Birchfield, CMI, Chairman; Cecilia Benites, CMI; David Finnman, CMI; Melton Spivak; James Bone, CMI; Norman Bruns; Lynne Jackson; and Terrence Griffin.

The Institute is most grateful to the individual authors and contributors of sections and chapters in this book. Each of these leading professionals took time out of a busy schedule to give us the benefit of their long experience. They have unselfishly shared their expertise with the reader and their collective effort has resulted in a practical textbook as well as a formal academic study.

Helene Fischer proofed and formatted the textbook. Her long hours of dedicated effort added immeasurably to the successful completion of the project.

CHAPTER 1

THE PROPERTY TAX: HISTORY AND ECONOMIC IMPACT AS A BACKGROUND TO MODERN MANAGEMENT TECHNIQUES

§1.01 THE PROPERTY TAX

[1] Definitions ¹

The following brief definitions are set forth to acquaint the reader with some general terms which are used repeatedly throughout this book. Several are treated in depth in various chapters. A cross-reference check should be made in the index.

[a] Assess

To make a valuation and appraisal of property in connection with listing of property liable to taxation. It implies the exercise of discretion on the part of officials charged with the duty of assessing, including the listing or inventory of the property involved and placing a value thereon.

"Assess" is often used interchangeably with "levy."

[b] Assessor

An official elected or appointed to discover, list, appraise, value or assess property for property tax purposes.

[c] Assessed Valuation

Value on each unit providing the basis to which the applicable tax rate is applied to determine the amount to be paid as property taxes.

[d] Assessment Roll

The list or roll of all taxable property, completed, verified and deposited by the assessors.

[e] Tax Rate

A tax rate is developed by dividing the cost of the local government's annual budget by the total assessed value on the tax roll. For example:

Annual Budget

\$2,000,000

a tax rate of 20 mills (\$200/\$100 or \$20 per

Total Assessed Value

\$100,000,000 =

\$1,000 of assessed valuation)

per Tax Roll

Definition references throughout are generally from: The Dictionary of Real Estate Appraisal, American Institute of Real Estate Appraisers, Chicago, Ill.; Black's Law Dictionary, West Publishing Company, St. Paul, Minn.; The Random House Dictionary of the English Language, Random House, New York; and Webster's New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Mass.

Any alteration of land or of any improvement (including fixtures) since the last lien date which constitutes a major rehabilitation thereof or which converts the property to a different use.

State Board of Equalization Rule 463 provides that an addition to land or improvements must be "substantial" to constitute a change in ownership and offers examples such as adding landfill, retaining walls, curbs, gutters, or sewers to land or constructing a new building or swimming pool or changing an existing improvement so as to add horizontally or vertically to its square footage or to incorporate an additional fixture. New construction also includes items such as site development of rural land for the purpose of establishing a residential subdivision; altering rolling, dry grazing land to level irrigated crop land,; and preparing a vacant lot for use as a parking facility.

Rule 463 explicitly excludes from the definition of "new construction" items which are normal maintenance or repair.

§1.04 Local Government Administration

This section was written by Paul C. Dooley, Kimco Realty Corp.

The colorful Speaker of the United States House of Representatives, Tip O'Neill, famously quipped that all politics is local.²³ To take Tip's point a bit further, the vast majority of government that we deal with on a regular basis is local. Clearly, we interface with the local government officials more than any other level of government. It is local government that provides our basic services: police and fire protection; road construction and maintenance; water and sewer, schools and libraries; and public recreation. Yet the activities that take place within the hallowed halls of our municipal buildings are often a mystery to us. As citizens and taxpayers, we ought to pause and explore the workings and key players of local government administration.

[1] The Assessor

The Assessor is the central figure in the local property tax assessment. The position can be elected or appointed. The responsibility of the assessor is the assignment of a fair and equitable assessment to each tax parcel. It is also the obligation of the assessor to ensure exemptions are properly administered and to hear appeals of assessments.

These officials are now often specially trained and certified. Communities of all sizes may rely on third party firms to assist in the appraisal process. However, all decision-making authority always rests with the public official: the assessor.

Like all public positions, there is tremendous trust placed in those that hold such office and the violation of that trust has serious consequences. Many states have strict ethics codes and penalties for any breach of ethics. Further, other law enforcement agencies can step in, as was the case in the Federal indictment of the Maricopa County Assessor for misuse of office.²⁴

²⁴ "County Assessor indicted, accused of misusing office," Associated Press, May 28, 2004.

²³ Tip O'Neill and William Novak, Man of the House: the Life and Political Memoirs of Speaker Tip O'Neill, New York: Random House, 1987.

[2] The Tax Collector and Treasurer

Once the tax rate is set, the tax collector is charged with issuance of the tax bills and the collection of the taxes. This position can be elected, but it is more often appointed. The position is often combined with the treasurer function.

It is important to note that the task of tax collection is separate and distinct from the assessor. The separation of responsibility is often a source of annoyance to the public as they can bounce between offices while researching a tax issue. The separation of the functions is critical to avoid any collusion of assessment and collection. Further, this separation of function is one of the hallmarks of our system of government.

[3] The Appropriating Body

It is in this legislative forum that the appropriation of funds takes place. Once the appropriation is voted, the budget is set and the tax rate is established to be applied to the assessor's tax levy and the tax bills are issued by the tax collector.

The city or town council may serve this function. In smaller communities the world's purest form of democracy is employed: the open town meeting. Attening a budget meeting or following it in the media can provide a great understanding of local government and the issues important to a particular community.

For anyone who has sat through the tumultuous process of appropriation, the suggestion of Winston Churchill that democracy is the "worst form of government, except for all others," is given new meaning.

[4] The Chief Executive

An elected mayor and town board are the traditional chief executives of local governments. Today, the reins have increasingly been handed over to the appointed professionals: city and town managers.

Local government is big business. A modest sized community of 20,000 to 30,000 residents can easily have a local government annual operating budget of \$100 million and a staff of several hundred employees. These professional managers are talented, well educated, and are getting well paid. The degree of choice is the Master of Public Administration, available at such schools as the Maxwell School at Syracuse University²⁵ and the Kennedy School at Harvard University. The salaries of these positions, even for a smaller community, now reach into the six figures.

In a world laden with democratic decision-making, checks and balances, and separated powers, getting things done is no easy task. In many areas, such as tax assessment, the authority of the manager is limited. The assessor and collector may be an elected or appointed authority outside the manager's office. However, like Richard Neustadt said of presidential power, the true strength of the position is not the power to command but the power to persuade.

²³The Maxwell School of Citizenship and Public Affairs is the oldest school of public administration and was recently ranked the best such in the country by <u>US News and World Report.</u>

[3] Conclusion

Once you have selected your staff, assigned responsibilities and completed the basic training process, it is very important to continue with ongoing training, review of staff responsibilities and a weekly review of workload and current projects. A successful property tax department works as "one." Personnel should be told when they are doing a good job and when they are not and why. The entire department should always be involved when discussions are held regarding a significant tax problem. Even if each individual cannot contribute to the discussion, the learning experience involved is well worth his or her presence. A department works together well where individuals are treated on an equal basis regardless of title or salaries. This is the foundation for a successful property tax department that will make a valuable contribution to any company.

§1.08 COMPLIANCE

This section was updated and expanded by Cecilia Benites, CMI, eProperty Tax

Managing its knowledge base is the most important need of a tax department to accomplish its compliance functions. The appropriate software can import data from an organization's financial and accounting systems; sort, filter, and classify data; perform calculations; export data for return preparation and, in some cases, actually generate the returns; store property tax values, projected property values and taxes, and actual tax payment information; and retain all pertinent data for audits. Documents can be scanned and sorted in a central database for easy retrieval. Unless there is a legal need for an original paper copy, most paper documents and bulky files can be eliminated. Whether it is a homegrown system, an outside provider, or a simple spreadsheet software, it is critical that all data is maintained uniformly and is accessible to the appropriate personnel.

[1] Initial Preparation and Data Gathering

Prior to the start of a tax year, the property tax practitioner must gather specific data to ensure that all compliance functions are performed timely and accurately. Required data will include:

[a] List Of Property Tax Obligation Locations

A comprehensive list of property tax obligation locations provides you with your basic reference material:

- Location address (situs).
- Which real properties are owned and which are leased.
- Which locations require the filing of a personal property return.

[b] List Of Taxing Jurisdictions

The location address must be checked to determine which jurisdictions have the authority to levy a tax. Is there liability to the state, county, parish, city, town, village, borough or school district? Is there liability for a personal property tax?

[c] Review Of Real Estate Assessments

Real Estate assessments should be reviewed for fairness prior to assessment day. It is usually easier to establish a fair assessment before it is levied. It is more difficult to appeal it once it has been fixed.

[a] Compliance Tools Available On Line

Research. Research engines, e.g., Google, Yahoo, Microsoft, provide instant access to free information.

Education

Many seminars are offered on line (Webinar)

Learn about new tools (via a Webcast)

Various classes, e.g., the University of Wisconsin at Milwaukee, School of Business Administration, offers an Online Graduate Certificate in State and Local Taxation which consists of four required courses. One of the four courses is "Property Taxation" (3 cr).

□ Electronic Filings

Electronic filing is accomplished in several ways. The first is the use of a form on a web site that is filled out and submitted to the jurisdiction. This form may be a simple file that is printed out and processed like a normal return that is mailed, or it may be processed automatically by the jurisdiction's system. This allows a taxpayer with a small number of returns to easily submit them to the jurisdiction without having to print, stamp and mail the returns. The other is a file transferred to the jurisdiction over the Internet and then processed by the jurisdiction's system. This allows for large numbers of returns to be transmitted and processed in batch. This is very useful to tax preparers that file large numbers of returns.

□ Electronic Payments Can Be Sent To Many Property Tax Collectors Via:

Wire Transfer Funds
Use of Corporate Credit Cards

File Transfers via email attachments transmitted through the Internet facilitates the transfer of data, no matter how large a file, from a location to one or many destinations.

[b] Jurisdictional Property Tax Sites

Perhaps the most helpful and most frequently used internet sites for property tax compliance are the official websites of jurisdictional assessors and property tax collectors. These sites usually contain important jurisdictional information such as phone numbers, addresses, due dates, deadlines, policies, procedures and more. But many websites go far beyond this general information, and provide parcel specific information. Some jurisdictions offer assessment and property tax data, while others have much more detail. Parcel maps, property tax distribution, payment history and assessment cards are just part of the wealth of information provided online by local jurisdictions. Some jurisdictions have taken their sites one step further and added business services like online property tax bill payment.

☐ How To Find Official Property Tax Sites

Information, data, and online services make these jurisdictional websites invaluable tools for tax professionals, however, first you need to learn to find them. There are websites that provide links to official websites for cities and counties. For example, http://www.naco.org can be used to find most of the official county websites, and http://officialcitysites.org is a link for most of the city and town websites. These two sites contain a very high percentage of the available jurisdictional websites. The linked sites are for the city or county home page and not for the assessor or treasurer, since these resources are not

specific to property tax. Finding the assessor or treasurer from these home pages varies among jurisdictions. Sometimes there will be an obvious link to the page tax professionals are seeking, other times you will need to do a little searching (many sites have a "directory of agencies" page that is a good place to start). When searching the Web, a search engine (Google, Yahoo...) can also be used to search for an official site to any jurisdiction. Keep in mind that there are some jurisdictions that do not have an online presence, as well as those that do have official sites but do not include information regarding assessment or taxation. However, new sites are being added all the time. Many states are mandating web pages for property tax, and in other states it should not be long before virtually all tax agencies are represented on the World Wide Web.

□ <u>Utilizing Official Property Tax Sites</u>

With many thousands of jurisdictions online, it is difficult to provide instructions for the use of these sites. Assessor and collector web pages vary greatly, but in most cases will consist of a home page with general information, and sub-pages with a wide variety of jurisdiction and/or state specific content. . Most jurisdictions have websites which make available many of the following:

Assessors' manuals
Assessment notices and tax bills can be obtained on line
Compliance dates
Depreciation schedules
Jurisdiction contact information
Personal property filing instructions
Renditions/forms
Statutes, regulations, policies, and procedures

The most helpful sites will also contain parcel specific information:

Legal descriptions Exemption detail Tax bill history Assessment records GIS maps

and more. Access to parcel specific information is usually accessed through an information look-up tool that will require the user to input reference information. The most common reference is parcel number, but many sites allow users to look up information using owner's name, assessor's ID or account number, address, and other identifiers. Access to current and historical property tax records at the click of your mouse may be the most important use of the Internet for property tax compliance professionals. Some property tax websites are even able to provide PDF versions of property tax bills and assessments that look identical to the original documents.

[c] Other

Scanned Images of original documents or copies can be transmitted instantly, thus eliminating the need to fax or mail the documents.

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